

**54-17-101. Title.**

This chapter is known as the "Energy Resource Procurement Act."

Enacted by Chapter 11, 2005 General Session

**54-17-102. Definitions.**

As used in this chapter:

- (1) "Affected electrical utility" means an electrical corporation with at least 200,000 retail customers in the state.
- (2) "Benchmark option" means an energy resource against which bids in an open bid process may be evaluated that:
  - (a) could be constructed or owned by:
    - (i) an affected electrical utility; or
    - (ii) an affiliate of an affected electrical utility; or
  - (b) may be a purchase of:
    - (i) electricity;
    - (ii) electric generating capacity; or
    - (iii) electricity and electric generating capacity.
- (3) "Integrated resource plan" means a plan that contains:
  - (a) the demand and energy forecast by the affected electrical utility for at least a ten-year period;
  - (b) the affected electrical utility's options for meeting the requirements shown in its load and resource forecast in an economic and reliable manner, including:
    - (i) demand-side and supply-side options; and
    - (ii) a brief description and summary cost-benefit analysis, if available, of each option that was considered;
  - (c) the affected electrical utility's assumptions and conclusions with respect to the effect of the plan on the cost and reliability of energy service;
  - (d) a description of the external environmental and economic consequences of the plan to the extent practicable; and
  - (e) any other data and analyses as the commission may require.
- (4) "Significant energy resource" for an affected electrical utility means a resource that consists of:
  - (a) a total of 100 megawatts or more of new generating capacity that has a dependable life of 10 or more years;
  - (b) a purchase of the following if the contract is for a term of 10 or more years and not less than 100 megawatts:
    - (i) electricity;
    - (ii) electric generating capacity; or
    - (iii) electricity and electrical generating capacity;
  - (c) the purchase or lease by an affected electrical utility from an affiliated company of:
    - (i) a generating facility;
    - (ii) electricity;
    - (iii) electrical generating capacity; or
    - (iv) electricity and electrical generating capacity;

(d) a contract with an option for the affected electrical utility or an affiliate to purchase a resource that consists of not less than 100 megawatts or more of new generating capacity that has a remaining dependable life of 10 or more years; or

(e) a type of resource designated by the commission as a significant energy resource in rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, after considering the affected electrical utility's integrated resource plan and action plan.

(5) "Solicitation" means a request for proposals or other invitation for persons to submit a bid or proposal through an open bid process for construction or acquisition of a significant energy resource.

Amended by Chapter 382, 2008 General Session

**54-17-103. Rulemaking.**

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:

(a) shall make rules when required by this chapter; and

(b) in addition to the rules required under Subsection (1)(a), may make rules necessary for the implementation of this chapter.

(2) Notwithstanding a requirement that the commission make rules, the commission may take action under this chapter before the commission makes a required rule including:

(a) approving a solicitation process under Part 2, Solicitation Process;

(b) approving a significant energy resource under Section 54-17-302;

(c) issuing an order under Section 54-17-304 regarding whether an affected electrical utility should proceed with implementing a significant energy resource decision;

(d) approving an energy resource under Section 54-17-402; or

(e) issuing an order under Section 54-17-404 regarding whether an energy utility should proceed with implementing a resource decision.

Amended by Chapter 382, 2008 General Session

**54-17-201. Solicitation process required -- Exception.**

(1) (a) An affected electrical utility shall comply with this chapter to acquire or construct a significant energy resource after February 25, 2005.

(b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant energy resource for which the affected electrical utility has issued a solicitation before February 25, 2005.

(2) (a) Except as provided in Subsection (3), to acquire or construct a significant energy resource, an affected electrical utility shall conduct a solicitation process that is approved by the commission.

(b) To obtain the approval of the commission of a solicitation process, the affected electrical utility shall file with the commission a request for approval that includes:

(i) a description of the solicitation process the affected electrical utility will use;

- (ii) a complete proposed solicitation; and
- (iii) any other information the commission requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (c) In ruling on the request for approval of a solicitation process, the commission shall determine whether the solicitation process:
  - (i) complies with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (ii) is in the public interest taking into consideration:
    - (A) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;
    - (B) long-term and short-term impacts;
    - (C) risk;
    - (D) reliability;
    - (E) financial impacts on the affected electrical utility; and
    - (F) other factors determined by the commission to be relevant.
- (d) Before approving a solicitation process under this section the commission:
  - (i) may hold a public hearing; and
  - (ii) shall provide an opportunity for public comment.
- (e) As part of its review of a solicitation process, the commission may provide the affected electrical utility guidance on any additions or changes to its proposed solicitation process.
- (f) Unless the commission determines that additional time to analyze a solicitation process is warranted and is in the public interest, within 60 days of the day on which the affected electrical utility files a request for approval of the solicitation process, the commission shall:
  - (i) approve a proposed solicitation process;
  - (ii) suggest modifications to a proposed solicitation process; or
  - (iii) reject a proposed solicitation process.
- (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or construct a significant energy resource without conducting a solicitation process if it obtains a waiver of the solicitation requirement in accordance with Section 54-17-501.
- (4) In accordance with the commission's authority under Subsection 54-12-2(2), the commission shall determine:
  - (a) whether this chapter or another competitive bidding procedure shall apply to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator; and
  - (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this chapter applies to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator.

Amended by Chapter 374, 2008 General Session  
Amended by Chapter 382, 2008 General Session

**54-17-202. Requirements for solicitation.**

- (1) The commission shall make rules, in accordance with Title 63G, Chapter 3,

Utah Administrative Rulemaking Act, outlining the requirements for a solicitation process. The rules required by this Subsection (1) shall include:

(a) the type of screening criteria an affected electrical utility may use in a solicitation process including the risks an affected electrical utility may consider;

(b) the required disclosures by an affected electrical utility if a solicitation includes a benchmark option;

(c) the required disclosures by an affected electrical utility related to the methodology the affected electrical utility uses to evaluate bids; and

(d) the participation of an independent evaluator in a manner consistent with Section 54-17-203.

(2) If an affected electrical utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of a significant energy resource, in making the rules required by Subsection (1), the commission may consider the impact of the multistate regulation including requirements imposed by other states as to:

(a) the solicitation process;

(b) cost recovery of resources; and

(c) methods by which the affected electrical utility may be able to mitigate the potential for cost disallowances.

Amended by Chapter 382, 2008 General Session

**54-17-203. Independent evaluator.**

(1) (a) The commission shall:

(i) appoint an independent evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter; and

(ii) oversee or direct the division to oversee the independent evaluator in monitoring any solicitation conducted by an affected electrical utility under this chapter.

(b) The commission, in accordance with Title 63G, Chapter 3, Utah Administrative Procedures Act, shall make rules setting the qualifications of an independent evaluator.

(2) The commission shall determine the method used to pay the fees and expenses for the independent evaluator which may include:

(a) the payment of a bid fee by bidders to a solicitation; or

(b) (i) requiring the affected electrical utility to pay the fees and expenses; and

(ii) permitting an affected electrical utility to recover the amounts paid under this Subsection (2)(b).

(3) (a) The independent evaluator may not make the decision as to which bid should be awarded under the solicitation.

(b) The independent evaluator shall:

(i) actively monitor the solicitation process for fairness and compliance with commission rules;

(ii) report regularly to:

(A) the commission; and

(B) others as directed by the commission;

(iii) develop one or more reports addressing:

- (A) the solicitation process;
- (B) any concerns of the independent evaluator related to the solicitation process; and
- (C) the ultimate results of the solicitation process, including the opinions and conclusions of the independent evaluator;
- (iv) provide ongoing input regarding issues, concerns, and improvements in the solicitation process with the objective of correcting ongoing deficiencies in the solicitation process to the following:
  - (A) the commission;
  - (B) the affected electrical utility; and
  - (C) others as directed by the commission;
- (v) render an opinion as to whether:
  - (A) the solicitation process is:
    - (I) fair; and
    - (II) in compliance with this part; and
  - (B) any modeling used by the affected electrical utility to evaluate bids is sufficient;
- (vi) testify in any proceeding under Section 54-17-302; and
- (vii) perform other functions and provide other input and reports as the commission may direct, including periodic presentations to interested parties regarding the solicitation process.

Amended by Chapter 382, 2008 General Session

**54-17-301. Review of integrated resource plan action plans.**

- (1) An affected electrical utility shall file with the commission any action plan developed as part of the affected electrical utility's integrated resource plan to enable the commission to review and provide guidance to the affected electrical utility.
- (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing a process for its review of an action plan.
- (b) The rules required under Subsection (2)(a) shall provide sufficient flexibility to permit changes in an action plan between the periodic filings of the affected electrical utility's integrated resource plan.

Amended by Chapter 382, 2008 General Session

**54-17-302. Approval of a significant energy resource decision required.**

- (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to conduct a solicitation for a significant energy resource or obtains a waiver of the requirement to conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement to obtain approval of the significant energy resource decision under Section 54-17-501, the affected electrical utility shall obtain approval of its significant energy resource decision:
  - (a) after the completion of the solicitation process, if the affected electrical utility is required to conduct a solicitation; and

(b) before an affected electrical utility may construct or enter into a binding agreement to acquire the significant energy resource.

(2) (a) To obtain the approval required by Subsection (1), the affected electrical utility shall file a request for approval with the commission.

(b) The request for approval required by this section shall include any information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) In ruling on a request for approval of a significant energy resource decision, the commission shall determine whether the significant energy resource decision:

(a) is reached in compliance with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) (i) is reached in compliance with the solicitation process approved by the commission in accordance with Part 2, Solicitation Process; or

(ii) is reached after the waiver of the solicitation process as provided in Subsection 54-17-201(3); and

(c) is in the public interest, taking into consideration:

(i) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;

(ii) long-term and short-term impacts;

(iii) risk;

(iv) reliability;

(v) financial impacts on the affected electrical utility; and

(vi) other factors determined by the commission to be relevant.

(4) The commission may not approve a significant energy resource decision under this section before holding a public hearing.

(5) Unless the commission determines that additional time to analyze a significant energy resource decision is warranted and is in the public interest, within 120 days of the day on which the affected electrical utility files a request for approval, the commission shall:

(a) approve the significant energy resource decision;

(b) approve the significant energy resource decision subject to conditions imposed by the commission; or

(c) disapprove the significant energy resource decision.

(6) The commission shall include in its order under this section:

(a) findings as to the total projected costs for construction or acquisition of an approved significant energy resource; and

(b) the basis upon which the findings described in Subsection (6)(a) are made.

(7) Notwithstanding any other provision of this part, an affected electrical utility may acquire a significant energy resource without obtaining approval pursuant to this section if it obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

(8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a significant energy resource decision under this section.

Amended by Chapter 374, 2008 General Session  
Amended by Chapter 382, 2008 General Session

**54-17-303. Cost recovery.**

(1) (a) Except as otherwise provided in this section, if the commission approves a significant energy resource decision under Section 54-17-302, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

- (i) relevant to the proceeding;
- (ii) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and
- (iii) up to the projected costs specified in the commission's order issued under Section 54-17-302.

(b) (i) The commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of the incremental cost relevant to the proceeding that were prudently incurred by the affected electrical utility to identify, evaluate, and submit a reasonable benchmark option, whether or not the benchmark option is selected or becomes operational.

(ii) A recoverable cost under Subsection (1)(b)(i) shall be included in the affected electrical utility's project costs for the purpose of evaluating the project's cost-effectiveness.

(iii) A recoverable cost under Subsection (1)(b)(i) may not be added to the cost or otherwise considered in the evaluation of a project proposed by any person other than the affected electrical utility for the purpose of evaluating that person's proposal.

(c) Except to the extent that the commission enters an order under Section 54-17-304, an increase from the projected costs specified in the commission's order issued under Section 54-17-302 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.

(2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i) or (ii), the commission may disallow some or all costs incurred in connection with an approved significant energy resource decision if the commission finds that an affected electrical utility's actions in implementing an approved significant energy resource decision are not prudent because of new information or changed circumstances that occur after:

(i) the commission's approval of the significant energy resource decisions under Section 54-17-302; or

(ii) a commission order to proceed under Section 54-17-304.

(b) In making a determination of prudence under Subsection (2)(a), the commission shall use the standards identified in Section 54-4-4.

(3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an affected electrical utility in connection with an approved significant energy resource decision upon a finding by the commission that the affected electrical utility is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Amended by Chapter 374, 2008 General Session

**54-17-304. Order to proceed.**

(1) (a) In the event of a change in circumstances or projected costs, an affected electrical utility may seek a commission review and determination of whether the affected electrical utility should proceed with the implementation of an approved significant energy resource decision.

(b) In making a determination under this Subsection (1), the commission shall use the standards identified in Subsection 54-17-302(3)(c).

(c) Before making a determination under this Subsection (1) the commission:

(i) may hold a public hearing; and

(ii) shall provide an opportunity for public comment.

(2) Unless the commission determines that additional time is warranted and is in the public interest, within 60 days of the day on which the affected electrical utility files a request for commission review and determination under this section, the commission shall:

(a) issue an order:

(i) determining that the affected electrical utility should proceed with the implementation of the significant energy resource decision;

(ii) making findings as to the total projected costs for construction or acquisition of the approved significant energy resource; and

(iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are made; or

(b) issue an order determining that the affected electrical utility should not proceed with the implementation of the significant energy resource decision.

(3) If the commission determines that the affected electrical utility should proceed with the implementation of the approved significant energy resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

(a) relevant to that proceeding;

(b) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and

(c) up to the projected costs as specified in the commission's order issued under Subsection (2)(a).

(4) If the commission determines that the affected electrical utility should not proceed with the implementation of the approved significant energy resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

(a) relevant to that proceeding; and

(b) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource before issuance of a determination not to proceed, including any prudently incurred costs of terminating the approved significant energy resource decision.



- (5) A commission order under this section not to proceed with the implementation of a significant energy resource may not prejudice:
- (a) the right of an affected electrical utility to:
    - (i) continue to implement the significant energy resource decision; and
    - (ii) seek recovery of costs incurred after a determination not to proceed in a future rate proceeding; or
  - (b) the right of any other party to support or oppose recovery of costs sought under Subsection (5)(a)(ii).
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for the commission's review and determination on a request for an order to proceed under this section.

Amended by Chapter 382, 2008 General Session

**54-17-401. Definitions.**

As used in this part:

- (1) "Energy utility" means one of the following with 200,000 retail customers in the state:
- (a) an electrical corporation; or
  - (b) a gas corporation.
- (2) (a) "Resource decision" means a decision, other than a decision to construct or acquire a significant energy resource, involving:
- (i) an energy utility's acquisition, management, or operation of energy production, processing, transmission, or distribution facilities or processes including:
    - (A) a facility or process for the efficient, reliable, or safe provision of energy to retail customers; or
    - (B) an energy efficiency and conservation program; or
  - (ii) a decision determined by the commission to be appropriate for review under this part.
- (b) The commission may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to specify the nature of resource decisions subject to approval under Section 54-17-402.

Amended by Chapter 382, 2008 General Session

**54-17-402. Request for review of resource decision.**

- (1) Beginning on February 25, 2005, before implementing a resource decision, an energy utility may request that the commission approve all or part of a resource decision in accordance with this part.
- (2) (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a request for approval with the commission.
- (b) The request for approval required by this section shall include any information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) In ruling on a request for approval of a resource decision, the commission shall determine whether the decision:

(a) is reached in compliance with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) is in the public interest, taking into consideration:

(i) whether it will most likely result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of an energy utility located in this state;

(ii) long-term and short-term impacts;

(iii) risk;

(iv) reliability;

(v) financial impacts on the energy utility; and

(vi) other factors determined by the commission to be relevant.

(4) (a) If the commission approves a proposed resource decision only in part, the commission shall explain in the order issued under this section why the commission does not approve the resource decision in total.

(b) Recovery of expenses incurred in connection with parts of a resource decision that are not approved is subject to the review of the commission as part of a rate hearing under Section 54-7-12.

(5) The commission may not approve a resource decision in whole or in part under this section before holding a public hearing.

(6) Unless the commission determines that additional time to analyze a resource decision is warranted and is in the public interest, within 180 days of the day on which the energy utility files a request for approval, the commission shall:

(a) approve all or part of the resource decision;

(b) approve all or part of the resource decision subject to conditions imposed by the commission; or

(c) disapprove all or part of the resource decision.

(7) The commission shall include in its order under this section:

(a) findings as to the approved projected costs of a resource decision; and

(b) the basis upon which the findings described in Subsection (7)(a) are made.

(8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a resource decision under this section.

Amended by Chapter 382, 2008 General Session

#### **54-17-403. Cost recovery.**

(1) (a) Except as otherwise provided in this section, if the commission approves any portion of an energy utility's resource decision under Section 54-17-402, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:

(i) relevant to that proceeding;

(ii) incurred by the energy utility in implementing the approved resource decision; and

(iii) up to the projected costs specified in the commission's order issued under Section 54-17-402.

(b) Except to the extent that the commission issues an order under Section

54-17-404, any increase from the projected costs specified in the commission's order issued under Section 54-17-402 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.

(2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i) or (ii), the commission may disallow some or all costs incurred in connection with an approved resource decision if the commission finds that an energy utility's actions in implementing an approved resource decision are not prudent because of new information or changed circumstances that occur after:

- (i) the commission approves the resource decision under Section 54-17-402; or
- (ii) the commission issues an order to proceed under Section 54-17-404.

(b) In making a determination of prudence under Subsection (2)(a), the commission shall use the standards identified in Section 54-4-4.

(3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an energy utility in connection with an approved resource decision upon a finding by the commission that the energy utility is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Enacted by Chapter 11, 2005 General Session

**54-17-404. Order to proceed.**

(1) (a) In the event of a change in circumstances or projected costs, an energy utility may seek a commission review and determination of whether the energy utility should proceed with the implementation of an approved resource decision.

(b) In making a determination under this Subsection (1), the commission shall use the standards identified in Subsection 54-17-402(3)(b).

(c) Before making a determination under this Subsection (1) the commission:

- (i) may hold a public hearing; and
- (ii) shall provide an opportunity for public comment.

(2) Unless the commission determines that additional time is warranted and is in the public interest, within 60 days of the day on which the energy utility files a request for commission review and determination under this section, the commission shall:

(a) issue an order:

(i) determining that the energy utility should proceed with the implementation of the resource decision;

(ii) making findings as to the total projected costs of the approved resource decision; and

(iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are made; or

(b) issue an order determining that the energy utility should not proceed with the implementation of the resource decision.

(3) If the commission determines that the energy utility should proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:

- (a) relevant to that proceeding;

(b) incurred by the energy utility in implementing the approved resource decision; and

(c) up to the projected costs as specified in the commission's order issued under Subsection (2)(a).

(4) If the commission determines that the energy utility should not proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:

(a) relevant to that proceeding; and

(b) incurred by the energy utility in implementing the approved resource decision before issuance of a determination not to proceed, including any prudently incurred costs of terminating the approved resource decision.

(5) A commission order under this section not to proceed with the implementation of a resource decision may not prejudice:

(a) the right of an energy utility to:

(i) continue to implement the resource decision; and

(ii) seek recovery of costs incurred after a determination not to proceed in a future rate proceeding; or

(b) the right of any other party to support or oppose the recovery sought under Subsection (5)(a)(ii).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for the commission's review and determination on a request for an order to proceed under this section.

Amended by Chapter 382, 2008 General Session

**54-17-501. Waiver of requirement for solicitation or approval.**

(1) An affected electrical utility may obtain a waiver of the requirement that it conduct a solicitation process under Part 2, Solicitation Process, or the requirement that it obtain approval of a significant energy resource decision under Part 3, Resource Plans and Significant Energy Resource Approval, if the commission determines that waiving the requirement is in the public interest because there exists:

(a) a clear emergency;

(b) a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility; or

(c) any other factor that makes waiving the requirement in the public interest.

(2) To obtain a finding from the commission under Subsection (1), the affected electrical utility shall, as soon as practicable after learning of the existence of a circumstance specified in Subsection (1):

(a) file a verified application with the commission; and

(b) serve an electronic and paper copy of the verified application, including all associated exhibits and attachments, on each person reflected on a list to be maintained and published by the commission on its Internet website that has requested service of waiver requests and has signed a generic protective order issued by the commission limiting the use of information contained in or attached to a waiver request.

(3) A verified application filed pursuant to Subsection (2) shall:

- (a) identify any waiver requested;
- (b) explain the basis for each waiver requested;
- (c) specify any time sensitivity associated with the verified application;
- (d) explain why the waiver requested is in the public interest; and
- (e) contain other information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Upon receipt of a verified application filed under Subsection (2), the commission shall, before the end of the next business day, provide public notice of a technical conference to be held no sooner than three business days and no later than seven calendar days following the day on which the verified application is filed and served.

(5) (a) At the technical conference held under Subsection (4), the affected electrical utility shall provide adequate support for its verified application and shall respond to questions of the commission, an independent evaluator if one is participating, and any other interested person.

(b) The commission shall prepare and retain a transcript of the technical conference.

(6) No less than three business days and no more than seven calendar days following the technical conference, the independent evaluator and any interested person may file and serve comments concerning the verified application.

(7) The commission shall issue a written decision either granting, granting with conditions, or denying each waiver requested no later than seven calendar days following the deadline for the independent evaluator and any interested person to file comments under Subsection (6).

(8) (a) If confidential or trade secret information is provided or used in the verified application, in the technical conference, in comments filed on the verified application or otherwise in the process, that information shall be clearly identified by the providing person as confidential and shall be provided on a confidential basis subject to the terms of a protective order issued by the commission.

(b) (i) The commission shall issue a generic protective order to govern access to and use of confidential information in connection with a request for waiver under this part.

(ii) Upon request by the affected electrical utility or any interested person, the commission may issue a supplemental protective order in connection with any verified application.

(c) (i) The generic protective order and any supplemental protective order restrict use of confidential information to the proceeding on the verified application, however, use of the confidential information in the proceeding is not considered a competitive purpose under Subsection (8)(c)(ii).

(ii) The generic protective order and any supplemental protective order shall forbid the use of confidential information for competitive purposes.

(d) An interested person may gain access to and use confidential information in accordance with the terms of a protective order issued by the commission.

(9) Notwithstanding the time frames in Subsections (4), (6), and (7), the commission:

- (a) shall take action or schedule proceedings as soon as reasonably practicable

in light of the circumstances and urgency demonstrated by the verified application and any subsequent information provided during the process; and

(b) may shorten or lengthen the time frames if the commission determines that changing them is warranted and in the public interest, except that a time frame may not be lengthened solely because an independent evaluator is not available to participate or to complete a recommendation.

(10) If an affected electrical utility is granted a waiver to acquire or construct a significant energy resource in accordance with this section:

(a) the provisions of Sections 54-17-303 and 54-17-304 do not apply to the significant energy resource decision;

(b) any cost recovery that an affected electrical utility seeks in connection with that significant energy resource is subject to a future prudence review by the commission under Subsection 54-4-4(4); and

(c) the waiver grant does not create any presumption that the affected electrical utility's action in acquiring or constructing a significant energy resource was prudent.

(11) (a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to have an independent evaluator available to participate in any application for a waiver under this part.

(b) The commission may decline to use an independent evaluator in the consideration of a waiver application if the commission determines the use of an independent evaluator is:

(i) not appropriate under the circumstances;

(ii) not available under terms or conditions the commission considers reasonable; or

(iii) not available to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).

(c) The validity of an order entered under this part is not affected by:

(i) the unavailability of an independent evaluator; or

(ii) the failure of an independent evaluator to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).

(12) The commission shall issue a generic protective order as provided in Subsections (2)(b) and (8)(b).

(13) By September 1, 2007, the commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules concerning the process for obtaining a waiver of the solicitation or approval process consistent with this section.

Amended by Chapter 382, 2008 General Session

**54-17-502. Renewable energy source -- Solicitation -- Consultant.**

(1) Sections 54-17-102 through 54-17-404 do not apply to a significant energy resource that is a renewable energy source as defined in Section 54-17-601 if the nameplate capacity of the renewable energy source does not exceed 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity from a renewable energy source does not exceed 300 megawatts.

(2) (a) (i) An affected electrical utility shall issue a public solicitation of bids for a

renewable energy source up to 300 megawatts in size by January 31 of each year in which it reasonably anticipates that it will need to acquire or commence construction of a renewable energy resource.

(ii) A solicitation for a renewable energy source issued by January 31, 2008 for up to 99 megawatts satisfies the requirement of this Subsection (2) for the year 2008 if:

(A) not later than 30 days after the day on which this section takes effect, the affected electrical utility amends the solicitation or initiates a new solicitation to seek bids for renewable energy source projects up to 300 megawatts in size; and

(B) within 60 days after the day on which this section takes effect and as soon as practicable, the commission retains a consultant in accordance with Subsection (3).

(b) A consultant hired under Subsection (2)(a)(ii)(B) shall perform the consultant's duties under Subsection (3) in relation to the status of the solicitation process at the time the consultant is retained and may not unreasonably delay the solicitation process.

(c) For a solicitation issued after January 31, 2008:

(i) the affected electrical utility shall develop a reasonable process for pre-approval of bidders; and

(ii) in addition to publicly issuing the solicitation in Subsection (2)(a)(i), the affected electrical utility shall send copies of the solicitation to each potential bidder who is pre-approved.

(d) The affected electrical utility shall evaluate in good faith each bid that is received and negotiate in good faith with each bidder whose bid appears to be cost effective, as defined in Section 54-17-602.

(e) Beginning on August 1, 2008, and on each August 1 thereafter, the affected electrical utility shall file a notice with the commission indicating whether it reasonably anticipates that it will need to acquire or commence construction of a renewable energy resource during the following year.

(3) (a) If the commission receives a notice under Subsection (2)(e) that the affected electrical utility reasonably anticipates that it will need to acquire or commence construction of a renewable energy source during the following year, the commission shall promptly retain a consultant to:

(i) validate that the affected electrical utility is following the bidder pre-approval process developed pursuant to Subsection (2)(c) and make recommendations for changes to the pre-approval process for future solicitations;

(ii) monitor and document all material aspects of the bids, bid evaluations, and bid negotiations between the affected electrical utility and any bidders in the solicitation process;

(iii) maintain adequate documentation of each bid, including the solicitation, evaluation, and negotiation processes and the reason for the conclusion of negotiations, which documentation shall be transmitted to the commission at the conclusion of all negotiations in the solicitation; and

(iv) be available to testify under oath before the commission in any relevant proceeding concerning all aspects of the public solicitation process.

(b) The commission and the consultant shall use all reasonable efforts to not delay the solicitation process.

(4) Documentation provided to the commission by the consultant shall be

available to the affected electrical utility, any bidder, or other interested person under terms and conditions and at times determined appropriate by the commission.

(5) (a) The commission and the consultant shall execute a contract approved by the commission with terms and conditions approved by the commission.

(b) Unless otherwise provided by contract, an invoice for the consultant's services shall be sent to the Division of Public Utilities for review and approval.

(c) After approval under Subsection (5)(b), the invoice shall be forwarded to the affected electrical utility for payment to the consultant.

(d) The affected electrical utility may, in a general rate case or other appropriate commission proceeding, include, and the commission shall allow, recovery by the affected electrical utility of any amount paid by the affected electrical utility for the consultant.

(6) (a) Nothing in this section precludes an affected electrical utility from constructing or acquiring any renewable energy source project outside the solicitation process provided for in this section, including purchasing electricity from any renewable energy source project that chooses to self-certify as a qualifying facility under the federal Public Utility Regulatory Policies Act of 1978.

(b) An affected electrical utility that constructs a renewable energy source outside the solicitation process of this section or Section 54-17-201 shall file a notice with the commission at least 60 days before the date of commencement of construction, indicating the size and location of the renewable energy source.

(c) The date of commencement of construction under Subsection (6)(b) is the date of any directive from an affected electrical utility to the person responsible for the construction of the renewable energy source authorizing or directing the person to proceed with construction.

(d) For an affected electrical utility whose rates are regulated by the commission, the utility has the burden of proving in a rate case or other appropriate commission proceeding the prudence, reasonableness, and cost-effectiveness of construction under this Subsection (6), including the method used to evaluate the risks and value of any bid submitted in the solicitation under this section.

(7) Nothing in this section requires an affected electrical utility to enter into any transaction that it reasonably believes is not cost effective or otherwise is not in the public interest.

Enacted by Chapter 374, 2008 General Session

**54-17-601. Definitions.**

As used in this part:

(1) "Adjusted retail electric sales" means the total kilowatt-hours of retail electric sales of an electrical corporation to customers in this state in a calendar year, reduced by:

(a) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from qualifying zero carbon emissions generation and qualifying carbon sequestration generation;

(b) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from generation located within the geographic



boundary of the Western Electricity Coordinating Council that derives its energy from one or more of the following but that does not satisfy the definition of a renewable energy source or that otherwise has not been used to satisfy Subsection 54-17-602(1):

- (i) wind energy;
- (ii) solar photovoltaic and solar thermal energy;
- (iii) wave, tidal, and ocean thermal energy;
- (iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:
  - (A) organic waste;
  - (B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
  - (C) agricultural residues;
  - (D) dedicated energy crops; and
  - (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;
- (v) geothermal energy;
- (vi) hydroelectric energy; or
- (vii) waste gas and waste heat capture or recovery; and
- (c) the number of kilowatt-hours attributable to reductions in retail sales in that calendar year from demand side management as defined in Section 54-7-12.8, with the kilowatt-hours for an electrical corporation whose rates are regulated by the commission and adjusted by the commission to exclude kilowatt-hours for which a renewable energy certificate is issued under Subsection 54-17-603(4)(b).

(2) "Amount of kilowatt-hours attributable to electricity generated or purchased in that calendar year from qualifying carbon sequestration generation," for qualifying carbon sequestration generation, means the kilowatt-hours supplied by a facility during the calendar year multiplied by the ratio of the amount of carbon dioxide captured from the facility and sequestered to the sum of the amount of carbon dioxide captured from the facility and sequestered plus the amount of carbon dioxide emitted from the facility during the same calendar year.

(3) "Banked renewable energy certificate" means a bundled or unbundled renewable energy certificate that is:

- (a) not used in a calendar year to comply with this part or with a renewable energy program in another state; and
- (b) carried forward into a subsequent year.

(4) "Bundled renewable energy certificate" means a renewable energy certificate for qualifying electricity that is acquired:

- (a) by an electrical corporation by a trade, purchase, or other transfer of electricity that includes the renewable energy attributes of, or certificate that is issued for, the electricity; or
- (b) by an electrical corporation by generating the electricity for which the renewable energy certificate is issued.

(5) "Electrical corporation":

- (a) is as defined in Section 54-2-1; and
- (b) does not include a person generating electricity that is not for sale to the

public.

(6) "Qualifying carbon sequestration generation" means a fossil-fueled generating facility located within the geographic boundary of the Western Electricity Coordinating Council that:

- (a) becomes operational or is retrofitted on or after January 1, 2008; and
- (b) reduces carbon dioxide emissions into the atmosphere through permanent geological sequestration or through another verifiably permanent reduction in carbon dioxide emissions through the use of technology.

(7) "Qualifying electricity" means electricity generated on or after January 1, 1995 from a renewable energy source if:

- (a) (i) the renewable energy source is located within the geographic boundary of the Western Electricity Coordinating Council; or
- (ii) the qualifying electricity is delivered to the transmission system of an electrical corporation or a delivery point designated by the electrical corporation for the purpose of subsequent delivery to the electrical corporation; and

(b) the renewable energy attributes of the electricity are not traded, sold, transferred, or otherwise used to satisfy another state's renewable energy program.

(8) "Qualifying zero carbon emissions generation":

(a) means a generation facility located within the geographic boundary of the Western Electricity Coordinating Council that:

- (i) becomes operational on or after January 1, 2008; and
- (ii) does not produce carbon as a byproduct of the generation process;
- (b) includes generation powered by nuclear fuel; and
- (c) does not include renewable energy sources used to satisfy the requirement established under Subsection 54-17-602(1).

(9) "Renewable energy certificate" means a certificate issued under Section 54-17-603.

(10) "Renewable energy source" means:

(a) an electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995 that derives its energy from one or more of the following:

- (i) wind energy;
- (ii) solar photovoltaic and solar thermal energy;
- (iii) wave, tidal, and ocean thermal energy;
- (iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:
  - (A) organic waste;
  - (B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
  - (C) agricultural residues;
  - (D) dedicated energy crops; and
  - (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;
- (v) geothermal energy located outside the state;
- (vi) waste gas and waste heat capture or recovery whether or not it is

renewable, including methane gas from:

- (A) an abandoned coal mine; or
- (B) a coal degassing operation associated with a state-approved mine permit;
- (vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon which the facility became operational, if the upgrades become operational on or after January 1, 1995;
- (viii) compressed air, if:
  - (A) the compressed air is taken from compressed air energy storage; and
  - (B) the energy used to compress the air is a renewable energy source; or
- (ix) municipal solid waste;
- (b) any of the following:
  - (i) up to 50 average megawatts of electricity per year per electrical corporation from a certified low-impact hydroelectric facility, without regard to the date upon which the facility becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after January 1, 1995, by a national certification organization;
  - (ii) geothermal energy if located within the state, without regard to the date upon which the facility becomes operational; or
  - (iii) hydroelectric energy if located within the state, without regard to the date upon which the facility becomes operational;
- (c) hydrogen gas derived from any source of energy described in Subsection (10)(a) or (b);
- (d) if an electric generation facility employs multiple energy sources, that portion of the electricity generated that is attributable to energy sources described in Subsections (10)(a) through (c); and
- (e) any of the following located in the state and owned by a user of energy:
  - (i) a demand side management measure, as defined by Subsection 54-7-12.8(1), with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent energy saved by the measure;
  - (ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent kilowatt-hours saved, except to the extent the commission determines otherwise with respect to net-metered energy;
  - (iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy;
  - (iv) a hydroelectric or geothermal facility with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the facility, except to the extent the commission determines otherwise with respect to net-metered energy;
  - (v) a waste gas or waste heat capture or recovery system, other than from a combined cycle combustion turbine that does not use waste gas or waste heat, with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy; and
  - (vi) the station use of solar thermal energy, solar photovoltaic energy,

hydroelectric energy, geothermal energy, waste gas, or waste heat capture and recovery.

(11) "Unbundled renewable energy certificate" means a renewable energy certificate associated with:

(a) qualifying electricity that is acquired by an electrical corporation or other person by trade, purchase, or other transfer without acquiring the electricity for which the certificate was issued; or

(b) activities listed in Subsection (10)(e).

Amended by Chapter 119, 2010 General Session

Amended by Chapter 125, 2010 General Session

Amended by Chapter 268, 2010 General Session

**54-17-602. Target amount of qualifying electricity -- Renewable energy certificate -- Cost-effectiveness -- Cooperatives.**

(1) (a) To the extent that it is cost effective to do so, beginning in 2025 the annual retail electric sales in this state of each electrical corporation shall consist of qualifying electricity or renewable energy certificates in an amount equal to at least 20% of adjusted retail electric sales.

(b) The amount under Subsection (1)(a) is computed based upon adjusted retail electric sales for the calendar year commencing 36 months before the first day of the year for which the target calculated under Subsection (1)(a) applies.

(c) Notwithstanding Subsections (1)(a) and (b), an increase in the annual target from one year to the next may not exceed the greater of:

(i) 17,500 megawatt-hours; or

(ii) 20% of the prior year's amount under Subsections (1)(a) and (b).

(2) (a) Cost-effectiveness under Subsection (1) for other than a cooperative association is determined in comparison to other viable resource options using the criteria provided by Subsection 54-17-201(2)(c)(ii).

(b) For an electrical corporation that is a cooperative association, cost-effectiveness is determined using criteria applicable to the cooperative association's acquisition of a significant energy resource established by the cooperative association's board of directors.

(3) This section does not require an electrical corporation to:

(a) substitute qualifying electricity for electricity from a generation source owned or contractually committed, or from a contractual commitment for a power purchase;

(b) enter into any additional electric sales commitment or any other arrangement for the sale or other disposition of electricity that is not already, or would not be, entered into by the electrical corporation; or

(c) acquire qualifying electricity in excess of its adjusted retail electric sales.

(4) For the purpose of Subsection (1), an electrical corporation may combine the following:

(a) qualifying electricity from a renewable energy source owned by the electrical corporation;

(b) qualifying electricity acquired by the electrical corporation through trade, power purchase, or other transfer; and

(c) a bundled or unbundled renewable energy certificate, including a banked renewable energy certificate.

(5) For an electrical corporation whose rates the commission regulates, the following rules concerning renewable energy certificates apply:

(a) a banked renewable energy certificate with an older issuance date shall be used before any other banked renewable energy certificate issued at a later date is used; and

(b) the total of all unbundled renewable energy certificates, including unbundled banked renewable energy certificates, may not exceed 20% of the amount of the annual target provided for in Subsection (1).

(6) An electrical corporation that is a cooperative association may count towards Subsection (1) any of the following:

(a) electric production allocated to this state from hydroelectric facilities becoming operational after December 31, 2007 if the facilities are located in any state in which the cooperative association, or a generation and transmission cooperative with which the cooperative association has a contract, provides electric service;

(b) qualifying electricity generated or acquired or renewable energy certificates acquired for a program that permits a retail customer to voluntarily contribute to a renewable energy source; and

(c) notwithstanding Subsection 54-17-601(7), an unbundled renewable energy certificate purchased from a renewable energy source located outside the geographic boundary of the Western Electricity Coordinating Council if the electricity on which the unbundled renewable energy certificate is based would be considered qualifying electricity if the renewable energy source was located within the geographic boundary of the Western Electricity Coordinating Council.

(7) The use of the renewable attributes associated with qualifying electricity to satisfy any federal renewable energy requirement does not preclude the electricity from being qualifying electricity for the purpose of this chapter.

Enacted by Chapter 374, 2008 General Session

**54-17-603. Renewable energy certificate -- Issuance -- Use to satisfy other requirements.**

(1) The commission shall establish a process for issuance or recognition of a renewable energy certificate.

(2) The commission process under Subsection (1) shall provide for the issuance, monitoring, accounting, transfer, and use of a renewable energy certificate, including in electronic form.

(3) The commission may:

(a) consult with another state or a federal agency and any regional system or trading program to fulfill Subsection (1); and

(b) allow use of a renewable energy certificate that is issued, monitored, accounted for, or transferred by or through a regional system or trading program, including the Western Renewable Energy Generation Information System, to fulfill this part's provisions.

(4) A renewable energy certificate shall be issued for:

- (a) qualifying electricity generated on and after January 1, 1995; and
- (b) the activities of an energy user described in Subsections 10-19-102(11)(e) and 54-17-601(10)(e) on and after January 1, 1995.
- (5) The person requesting a renewable energy certificate shall affirm that the renewable energy attributes of the electricity have not been traded, sold, transferred, or otherwise used to satisfy another state's renewable energy requirements.
- (6) (a) For the purpose of satisfying Subsection 54-17-602(1) and the issuance of a renewable energy certificate under this section, a renewable energy source located in this state that derives its energy from solar photovoltaic or solar thermal energy shall be credited for 2.4 kilowatt-hours of qualifying electricity for each 1.0 kilowatt-hour generated.
- (b) Notwithstanding Subsection (6)(a), the acquisition or construction by an electrical corporation of a renewable energy source that derives its energy from solar photovoltaic or solar thermal energy shall comply with the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).
- (7) A renewable energy certificate issued under this section:
  - (a) does not expire; and
  - (b) may be banked.
- (8) The commission may recognize a renewable energy certificate that is issued, monitored, accounted for, or transferred by or through another state or a regional system or trading program, including the Western Renewable Energy Generation Information System, if the renewable energy certificate is for qualifying electricity.
- (9) A renewable energy certificate:
  - (a) may be used only once to satisfy Subsection 54-17-602(1);
  - (b) may be used for the purpose of Subsection 54-17-602(1) and the qualifying electricity on which the renewable energy certificate is based may be used to satisfy any federal renewable energy requirement; and
  - (c) may not be used if it has been used to satisfy any other state's renewable energy requirement.
- (10) The commission shall establish procedures and reasonable rates permitting an electrical corporation that is a purchasing utility under Section 54-12-2 to acquire or retain a renewable energy certificate associated with the purchase of power from an independent energy producer.

Amended by Chapter 140, 2009 General Session

**54-17-604. Plans and reports.**

- (1) An electrical corporation shall develop and maintain a plan for implementing Subsection 54-17-602(1), consistent with the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).
- (2) (a) A progress report concerning a plan under Subsection (1) for other than a cooperative association shall be filed with the commission by January 1 of each of the years 2010, 2015, 2020, and 2024.
- (b) For an electrical corporation that is a cooperative association, a progress report shall be filed with the cooperative association's board of directors by January 1 of each of the years 2010, 2015, 2020, and 2024.

(3) The progress report under Subsection (2) shall contain:

- (a) the actual and projected amount of qualifying electricity through 2025;
- (b) the source of qualifying electricity;
- (c) (i) an analysis of the cost-effectiveness of renewable energy sources for other than a cooperative association; or
- (ii) an estimate of the cost of achieving the target for an electrical corporation that is a cooperative association;
- (d) a discussion of conditions impacting the renewable energy source and qualifying electricity markets;
- (e) any recommendation for a suggested legislative or program change; and
- (f) for other than a cooperative association, any other information requested by the commission or considered relevant by the electrical corporation.

(4) The plan and progress report required by Subsections (1) and (2) may include procedures that will be used by the electrical corporation to identify and select any renewable energy resource and qualifying electricity that satisfy the criteria of Subsection 54-17-201(2)(c)(ii).

(5) By July 1, 2026, each electrical corporation shall file a final progress report demonstrating:

- (a) how Subsection 54-17-602(1) is satisfied for the year 2025; or
- (b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025, if it is not satisfied.

(6) By January 1 of each of the years 2011, 2016, 2021, and 2025, the Division of Public Utilities shall submit to the Legislature a report containing a summary of any progress report filed under Subsections (2) through (5).

(7) The summary required by Subsection (6) shall include any recommendation for legislative changes.

(8) (a) By July 1, 2027, the commission shall submit to the Legislature a report summarizing the final progress reports and recommending any legislative changes.

(b) The 2027 summary may contain a recommendation to the Legislature concerning any action to be taken with respect to an electrical corporation that does not satisfy Subsection 54-17-602(1) for 2025.

(c) The commission shall provide an opportunity for public comment and take evidence before recommending any action to be taken with respect to an electrical corporation that does not satisfy Subsection 54-17-602(1) for 2025.

(9) If a recommendation containing a penalty for failure to satisfy Subsection 54-17-602(1) is made under Subsection (8), the proposal shall require that any amount paid by an electrical corporation as a penalty be utilized to fund demand-side management for the retail customers of the electrical corporation paying the penalty.

(10) A penalty may not be proposed under this section if an electrical corporation's failure to satisfy Subsection 54-17-602(1) is due to:

- (a) a lack of cost-effective means to satisfy the requirement; or
- (b) force majeure.

(11) By July 1, 2026, an electrical corporation that is a cooperative association shall file a final progress report demonstrating:

- (a) how Subsection 54-17-602(1) is satisfied for the year 2025; or
- (b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025 if it

is not satisfied.

(12) The plan and any progress report file under this section by an electrical corporation that is cooperative association shall be publicly available at the cooperative association's office or posted on the cooperative association's website.

Enacted by Chapter 374, 2008 General Session

**54-17-605. Recovery of costs for renewable energy activities.**

(1) In accordance with other law, the commission shall include in the retail electric rates of an electrical corporation whose rates the commission regulates the state's share of any of the costs listed in Subsection (2) that are relevant to the proceeding in which the commission is considering the electrical corporation's rates:

(a) if the costs are prudently incurred by the electrical corporation in connection with:

- (i) the acquisition of a renewable energy certificate;
  - (ii) the acquisition of qualifying electricity for which a renewable energy certificate will be issued after the acquisition; and
  - (iii) the acquisition, construction, and use of a renewable energy source; and
- (b) to the extent any qualifying electricity or renewable energy source under Subsection (1)(a) satisfies the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).

(2) The following are costs that may be recoverable under Subsection (1):

(a) a cost of siting, acquisition of property rights, equipment, design, licensing, permitting, construction, owning, operating, or otherwise acquiring a renewable energy source and any associated asset, including transmission;

(b) a cost to acquire qualifying electricity through trade, power purchase, or other transfer;

(c) a cost to acquire a bundled or unbundled renewable energy certificate, if any net revenue from the sale of a renewable energy certificate allocable to this state is also included in rates;

(d) a cost to interconnect a renewable energy source to the electrical corporation's transmission and distribution system;

(e) a cost associated with using a physical or financial asset to integrate, firm, or shape a renewable energy source on a firm annual basis to meet a retail electricity need; and

(f) any cost associated with transmission and delivery of qualifying electricity to a retail electricity consumer.

(3) (a) The commission may allow an electrical corporation to use an adjustment mechanism or reasonable method other than a rate case under Sections 54-4-4 and 54-7-12 to allow recovery of costs identified in Subsection (2).

(b) If the commission allows the use of an adjustment mechanism, both the costs and any associated benefit shall be reflected in the mechanism, to the extent practicable.

(c) This Subsection (3) creates no presumption for or against the use of an adjustment mechanism.

(4) (a) The commission may permit an electrical corporation to include in its



retail electric rates the state's share of costs prudently incurred by the electrical corporation in connection with a renewable energy source, whether or not the renewable energy source ultimately becomes operational, including costs of:

- (i) siting;
- (ii) property acquisition;
- (iii) equipment;
- (iv) design;
- (v) licensing;
- (vi) permitting; and
- (vii) other reasonable items related to the renewable energy source.

(b) Subsection (4)(a) creates no presumption concerning the prudence or recoverability of the costs identified.

(c) To the extent deferral is consistent with other applicable law, the commission may allow an electrical corporation to defer costs recoverable under Subsection (4)(a) until the recovery of the deferred costs can be considered in a rate proceeding or an adjustment mechanism created under Subsection (3).

(d) An application to defer costs shall be filed within 60 days after the day on which the electrical corporation determines that the renewable energy source project is impaired under generally accepted accounting principles and will not become operational.

(e) Notwithstanding the opportunity to defer costs under Subsection (4)(c), a cost incurred by an electrical corporation for siting, property acquisition, equipment, design, licensing, and permitting of a renewable energy source that the electrical corporation proposes to construct shall be included in the electrical corporation's project costs for the purpose of evaluating the project's cost-effectiveness.

(f) A deferred cost under Subsection (4)(a) may not be added to, or otherwise considered in the evaluation of, the cost of a project proposed by any person other than the electrical corporation for the purpose of evaluating that person's proposal.

Enacted by Chapter 374, 2008 General Session

**54-17-606. Commission rules.**

The commission shall make rules as necessary to implement this part.

Enacted by Chapter 374, 2008 General Session

**54-17-607. Procedure and appeals under this chapter.**

(1) The governing authority, as defined in Section 54-15-102, has primary jurisdiction concerning issues of interpretation, implementation, and administration of this chapter.

(2) An appeal of a commission order under this chapter is governed by Chapter 7, Hearings, Practice, and Procedure.

Enacted by Chapter 374, 2008 General Session

**54-17-701. Rules for carbon capture and geological storage.**

(1) By January 1, 2011, the Division of Water Quality and the Division of Air Quality, on behalf of the Board of Water Quality and the Board of Air Quality, respectively, in collaboration with the commission and the Division of Oil, Gas, and Mining and the Utah Geological Survey, shall present recommended rules to the Legislature's Administrative Rules Review Committee for the following in connection with carbon capture and accompanying geological sequestration of captured carbon:

- (a) site characterization approval;
- (b) geomechanical, geochemical, and hydrogeological simulation;
- (c) risk assessment;
- (d) mitigation and remediation protocols;
- (e) issuance of permits for test, injection, and monitoring wells;
- (f) specifications for the drilling, construction, and maintenance of wells;
- (g) issues concerning ownership of subsurface rights and pore space;
- (h) allowed composition of injected matter;
- (i) testing, monitoring, measurement, and verification for the entirety of the carbon capture and geologic sequestration chain of operations, from the point of capture of the carbon dioxide to the sequestration site;
- (j) closure and decommissioning procedure;
- (k) short- and long-term liability and indemnification for sequestration sites;
- (l) conversion of enhanced oil recovery operations to carbon dioxide geological sequestration sites; and
- (m) other issues as identified.

(2) The entities listed in Subsection (1) shall report to the Legislature's Administrative Rules Review Committee any proposals for additional statutory changes needed to implement rules contemplated under Subsection (1).

(3) On or before July 1, 2009, the entities listed in Subsection (1) shall submit to the Legislature's Public Utilities and Technology and Natural Resources, Agriculture, and Environment Interim Committees a progress report on the development of the recommended rules required by this part.

(4) The recommended rules developed under this section apply to the injection of carbon dioxide and other associated injectants in allowable types of geological formations for the purpose of reducing emissions to the atmosphere through long-term geological sequestration as required by law or undertaken voluntarily or for subsequent beneficial reuse.

(5) The recommended rules developed under this section do not apply to the injection of fluids through the use of Class II injection wells as defined in 40 C.F.R. 144.6(b) for the purpose of enhanced hydrocarbon recovery.

(6) Rules recommended under this section shall:

- (a) ensure that adequate health and safety standards are met;
- (b) minimize the risk of unacceptable leakage from the injection well and injection zone for carbon capture and geologic sequestration; and
- (c) provide adequate regulatory oversight and public information concerning carbon capture and geologic sequestration.

Amended by Chapter 344, 2009 General Session

#### **54-17-801. Definitions.**

As used in this part:

- (1) "Contract customer" means a person who executes or will execute a renewable energy contract with a qualified utility.
- (2) "Qualified utility" means an electric corporation that serves more than 200,000 retail customers in the state.
- (3) "Renewable energy contract" means a contract under this part for the delivery of electricity from one or more renewable energy facilities to a contract customer requiring the use of a qualified utility's transmission or distribution system to deliver the electricity from a renewable energy facility to the contract customer.
- (4) "Renewable energy facility":
  - (a) except as provided in Subsection (4)(b), means a renewable energy source defined in Section 54-17-601 that is located in the state; and
  - (b) does not include an electric generating facility whose costs have been included in a qualified utility's rates as a facility providing electric service to the qualified utility's system.

Amended by Chapter 34, 2014 General Session

#### **54-17-802. Contracts for the purchase of electricity from a renewable energy facility.**

- (1) Within a reasonable time after receiving a request from a contract customer and subject to reasonable credit requirements, a qualified utility shall enter into a renewable energy contract with the requesting contract customer to supply some or all of the contract customer's electric service from one or more renewable energy facilities selected by the contract customer.
- (2) Subject to a contract customer agreeing to pay the qualified utility for all incremental costs associated with metering facilities, communication facilities, and administration, a renewable energy contract may provide for electricity to be delivered to a contract customer:
  - (a) from one renewable energy facility to a contract customer's single metered delivery location;
  - (b) from multiple renewable energy facilities to a contract customer's single metered delivery location; or
  - (c) from one or more renewable energy facilities to a single contract customer's multiple metered delivery locations.
- (3)
  - (a) A single contract customer may aggregate multiple metered delivery locations to satisfy the minimum megawatt limit under Subsection (4).
  - (b) Multiple contract customers may not aggregate their separate metered delivery locations to satisfy the minimum megawatt limit under Subsection (4).
- (4) The amount of electricity provided to a contract customer under a renewable energy contract may not be less than 2.0 megawatts.
- (5) The amount of electricity provided in any hour to a contract customer under a renewable energy contract may not exceed the contract customer's metered kilowatt-hour load in that hour at the metered delivery locations under the contract.
- (6) A renewable energy contract that meets the requirements of Subsection (4)

may provide for one or more increases in the amount of electricity to be provided under the contract even though the amount of electricity to be provided by the increase is less than the minimum amount required under Subsection (4).

(7) The total amount of electricity to be generated by renewable energy facilities and delivered to contract customers at any one time under all renewable energy contracts may not exceed 300 megawatts, unless the commission approves in advance a higher amount.

(8) Electricity generated by a renewable energy facility and delivered to a contract customer under a renewable energy contract may not be included in a net metering program under Chapter 15, Net Metering of Electricity.

Enacted by Chapter 182, 2012 General Session

**54-17-803. Ownership of a renewable energy facility -- Joint ownership -- Ownership of environmental attributes.**

(1) A renewable energy facility may be owned:

(a) by a person who will be a contract customer receiving electricity from the renewable energy facility;

(b) by a qualified utility;

(c) by a person other than a contract customer or qualified utility; or

(d) jointly by any combination of Subsections (1)(a), (b), and (c), whether in equal shares or otherwise.

(2) A qualified utility may be a joint owner of a renewable energy facility only if:

(a) the qualified utility consents to being a joint owner; and

(b) the joint ownership agreement requires the qualified utility to recover from contract customers receiving electricity from the renewable energy facility all of the qualified utility's costs associated with its ownership of the renewable energy facility, including administrative, acquisition, operation, and maintenance costs, unless the commission, in an order issued in a separate regulatory proceeding:

(i) authorizes the qualified utility to recover some of those costs from customers other than contract customers;

(ii) determines that the rate to be paid for electricity from the renewable energy facility by customers other than contract customers is cost effective; and

(iii) approves the inclusion of the rate determined under Subsection (2)(b)(ii) in general rates or through a commission approved cost recovery mechanism.

(3) To the extent that any electricity from a renewable energy facility to be delivered to a contract customer is owned by a person other than the contract customer:

(a) the qualified utility shall, by contract with the owner of the electricity to be sold from the renewable energy facility, purchase electricity for resale to one or more contract customers;

(b) the qualified utility shall sell that electricity to the contract customer or customers under renewable energy contracts with the same duration and pricing as the contract between the qualified utility and the owner of the electricity to be sold from the renewable energy facility; and

(c) the qualified utility's contract with the owner of the electricity to be sold from

the renewable energy facility shall provide that the qualified utility's obligation to purchase electricity under that contract ceases if the contract customer defaults in its obligation to purchase and pay for the electricity under the contract with the qualified utility.

(4) The right to any environmental attribute associated with a renewable energy facility shall remain the property of the renewable energy facility's owner, except to the extent that a contract to which the owner is a party provides otherwise.

Enacted by Chapter 182, 2012 General Session

**54-17-804. Exemption from certificate of convenience and necessity requirements.**

(1) A qualified utility is not required to comply with Section 54-4-25 with respect to a renewable energy facility that is the subject of a renewable energy contract if:

(a) each contract necessary for the commission to determine compliance with this part is filed with the commission; and

(b) the commission determines that each contract relating to the renewable energy facility complies with this part.

(2) In making its determination under Subsection (1)(b), the commission may process and consider together multiple renewable energy contracts between the same contract customer and the qualified utility providing for the delivery of electricity from a renewable energy facility to the contract customer's multiple metered delivery locations.

Enacted by Chapter 182, 2012 General Session

**54-17-805. Costs associated with delivering electricity from a renewable energy facility to a contract customer.**

(1) To the extent that a renewable energy contract provides for the delivery of electricity from a renewable energy facility owned by the contract customer, the renewable energy contract shall require the contract customer to pay for the use of the qualified utility's transmission or distribution facilities at the qualified utility's applicable rates, which may include transmission costs at the qualified utility's applicable rate approved by the Federal Energy Regulatory Commission.

(2) To the extent that a renewable energy contract provides for the delivery of electricity from a renewable energy facility owned by a person other than the qualified utility or the contract customer, the renewable energy contract shall require the contract customer to bear all reasonably identifiable costs that the qualified utility incurs in delivering the electricity from the renewable energy facility to the contract customer, including all costs to procure and deliver electricity and for billing, administrative, and related activities, as determined by the commission.

(3) A qualified utility that enters a renewable energy contract shall charge a contract customer for all metered electric service delivered to the contract customer, including generation, transmission, and distribution service, at the qualified utility's applicable tariff rates, excluding:

(a) any kilowatt hours of electricity delivered from the renewable energy facility, based on the time of delivery, adjusted for transmission losses;

(b) any kilowatts of electricity delivered from the renewable energy facility that coincide with the contract customer's monthly metered kilowatt demand measurement, adjusted for transmission losses;

(c) any transmission and distribution service that the contract customer pays for under Subsection (1) or (2); and

(d) any transmission service that the contract customer provides under Subsection (2) to deliver generation from the renewable energy facility.

Enacted by Chapter 182, 2012 General Session